

John Boehner  
Chairman  
8th District, Ohio

*House Meets at 9:00 a.m. and Will Recess Immediately to Receive the President of the Republic of South Korea in a Joint Meeting. Following Meeting, House Will Reconvene for Legislative Business  
(No Votes Before 5:00 p.m.)*

*Anticipated Floor Action:*

**H.R. 3150—Bankruptcy Reform Act**

**H.J. Res. 119—Proposing a Constitutional Amendment to Limit Campaign Spending**

**H.R. 2888—Sales Incentive Compensation Act**



**H.R. 3150—Bankruptcy Reform Act**

**Floor Situation:** The House will consider H.R. 3150 as its first order of business today. Yesterday, the Rules Committee granted a structured rule which provides one hour of general debate equally divided between the chairman and ranking minority member of the Judiciary Committee. The rule waives House rules which prohibit consideration of legislation which provides new budget authority, changes revenues, or changes in the public debt for a fiscal year until the budget resolution for that year has been agreed to. It makes a committee amendment in the nature of a substitute in order as base text and waives all points of order against the substitute. Additionally, the rule makes in order 11 amendments, each debatable in the order listed for the amount of time specified below. The rule allows the chairman of the Committee of the Whole to postpone votes and reduce the voting time on postponed vote to five minutes, provided it follows a regular 15-minute vote. Finally, the rule provides for one motion to recommit, with or without instructions.

**Summary:** H.R. 3150 initiates comprehensive reforms pertaining to consumer and business bankruptcy law and practice, and includes provisions regarding the treatment of tax claims and enhanced data collection regarding annual bankruptcy filings. The bill also establishes a separate chapter under the bankruptcy code which is devoted to the special issues and concerns presented by international insolvencies. H.R. 3150 enhances protection for children and spouses of persons who

file for bankruptcy by ensuring that child support and alimony payments ordered by a court are protected from discharge in bankruptcy. Such payments already are protected to a large extent; however, H.R. 3150 makes them an even higher priority obligation in the hierarchy of outstanding debts to be satisfied in full by a person who files for consumer bankruptcy.

In addition, the bill (1) protects charitable contributions made to charities before filing for bankruptcy under certain conditions; (2) discourages “bad faith” bankruptcies by preventing individuals from extending debt relief periods by repeatedly filing for bankruptcy; (3) prevents debtors from reducing their outstanding debt load by switching their cases between bankruptcy chapters; (4) holds individuals responsible for “last minute” debt incurred prior to declaring bankruptcy; (5) establishes uniform national reporting requirements for chapter 11 business filers; (6) outlines a series of infractions a debtor may commit which may result in his or her chapter 11 case being converted to chapter 7; (7) permits *pro se* creditors to appear and participate in a chapter 7 or 13 case first meeting without the need to hire a lawyer; (8) specifies that filers of chapter 7 or 13 bankruptcy must file certain information within 45 days or risk dismissal of their case by the court the following day; and (9) creates a new section of bankruptcy law to address a myriad of issues involved in bankruptcy cases located in the U.S. and at least one other country. CBO estimates that enactment will result in an increase in discretionary spending of \$214 million between 1999-2003, subject to the appropriation of necessary funds. H.R. 3150 was introduced by Mr. Gekas on February 3, and was reported by the Judiciary Committee by voice vote on May 14, 1998.

**Views:** The Republican Leadership strongly supports passage of H.R. 3150. The Clinton Administration has not yet issued a formal position on the bill, but has submitted testimony to the Judiciary Committee critical of multiple provisions included in the measure, including those central to reforming access to and use of chapter 7 bankruptcy provisions for individual bankruptcy filers.

**Amendments:** As stated above, the rule makes the following 11 amendments in order, debatable for the amount of time specified and in the order listed below:

**Mr. Hyde** will offer a manager’s amendment, debatable for 10 minutes, to make numerous changes to the bill’s provisions. Specifically, the amendment:

- \* allows a debtor who is financially disqualified (based on the needs-based formula which determines a person’s ability to repay debts compared with his means to do so) from seeking bankruptcy relief under chapter 7 to seek such relief under chapter 11;
- \* requires nonprofit debt counseling services, of which a debtor is notified in writing as an alternative to seeking outright bankruptcy relief, to provide their services for free or at a reduced rate. This provision ensures that unscrupulous debt counselors do not appear on the written list of services provided to a debtor at the time he is considering filing for bankruptcy and is informed of his alternatives, as is currently required by the bill;
- \* allows a bank trustee to remove a debt counseling service from the list of bankruptcy alternatives upon learning that the service engages in practices that are unscrupulous or otherwise detrimental to potential clients;

- \* extends to 180 days from enactment the time period in which the director of the Executive Office for U.S. Trustees—which assigns trustees to bankruptcy cases—must develop and implement a pilot program that consists of financial management training curriculum for debtors to go through once they file for bankruptcy. The bill currently authorizes courts to require debtors to enter such a program once established by the Executive Office. This change is included to allow sufficient time for the Executive Office to develop the necessary materials for the program;
- \* specifies that only attorneys may give legal advice to consumer debtors filing for bankruptcy relief once they approach a debt counseling service for direction in how to proceed through the process of declaring bankruptcy. The bill currently requires debt counseling services to disclose certain information to their clients, which may include legal advice about the ramifications of filing for bankruptcy. Moreover, the amendment specifically prohibits non-attorneys from providing legal advice in debt relief counseling services to their clients;
- \* amends the strict liability standard applied to debt relief counseling agencies that provide advice to their clients under the bill’s current provisions. Instead, the amendment specifies that agencies must provide accurate information and avoid making any untrue or misleading statements if the agency should have known the statements were untrue or misleading. Such statements will result in liability against the agency;
- \* establishes civil penalties and injunctive relief against agencies which violate the above provision by giving false or misleading advice to their clients. The bill currently contains a strict liability standard against such agencies but does not specifically apply a monetary or other penalty for them;
- \* clarifies the bill’s provisions regarding charitable contributions to specify that 15 percent of a person’s income may consist of contributions to charity and that the contributions will be counted in the aggregate;
- \* allows bankruptcy courts to extend an automatic stay to creditors wishing to pursue collection of their debts only if an interested (creditor) party files a motion with the court, and a hearing is held, to do so;
- \* directs courts to specifically describe compelling circumstances which result in the court’s provision of an extension of automatic stay protection for a debtor. The bill currently requires courts to provide immediate relief, or immediately lift protections, from an automatic stay to creditors when, for cause, such relief is warranted unless compelling circumstances on the debtor’s part justify an extension;
- \* specifies that “necessary expenses” that result in added debt for a debtor immediately preceding a bankruptcy filing must not exceed \$250 in the aggregate. The bill currently includes a provision to this effect, but does not specify a dollar amount;
- \* deletes provisions which make certain credit extensions obtained without a reasonable expectation of payment nondischargeable, even when an intent to deceive a creditor in order to obtain the line of credit exists;

- \* elevates to third-level priority the rank given to debts based on spousal and child support obligations in current law, which currently provides them seventh-level priority among priority debts that are not dischargeable in bankruptcy;
- \* makes an exception to homestead exemptions allowed in bankruptcy to cases that are involuntarily commenced under provisions outlined in current law. The bill currently limits to \$100,000 the amount of a homestead exemption a person may take when filing for bankruptcy. The intent of the amendment is to ensure that the exemption limit does not present an opportunity for creditors to force debtors currently residing in states with higher homestead exemptions into involuntary bankruptcy, and thereby enforce the \$100,000 limit, just so the creditor can collect on a home value amount that exceeds \$100,000. The amendment also prevents state exemption provisions from being manipulated wrongly via involuntary bankruptcy proceedings, thereby protecting states' rights to establish distinct bankruptcy criteria from existing federal law, which is a currently-allowed practice;

## *Title II*

- \* allows courts to appoint fee examiners for persons who incur fees and expenses while administering bankruptcy cases on behalf of a debtor. The amendment allows courts to do so provided that professionals who offer such services are not compensated based on the amount of fees they recommend, which would be tantamount to a commission-style compensation;
- \* requires that when a court wishes to change the membership of a debtor's creditors' and security holders' committee, the court must first submit the request to the case's trustee before any membership action can be taken;
- \* amends the provision of H.R. 3150 which allows creditors to enforce performance that is outstanding on a contract with a performance artist who enters bankruptcy, in order to ensure that the financial circumstances of the artist/debtor are equally considered with the rights of the creditor to expect and receive full performance on the contract once bankruptcy proceedings have been initiated;
- \* clarifies bill provisions requiring establishment of uniform reporting rules and forms for small business bankruptcy cases to vest such authority and responsibility in the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the U.S. to complete this task and provide guidance;
- \* mandates that trustees and bankruptcy administrators must promptly take action in cases where material grounds for conversion or dismissal of a chapter 11 case exist under current law. The bill currently outlines several specific duties for trustees and administrators;
- \* requires interested parties to establish that a debtor's confirmation order has been revoked by a court when, under current law, a debtor's case reveals grounds reversing or denying of a repayment plan confirmation order;

- \* adds current law provisions to those outlined as applicable to chapter 9 bankruptcy cases, which are specially reserved for municipality bankruptcy cases. The newly-specified provisions include the contractual right to (1) liquidate a securities contract, (2) liquidate a commodities contract or forward contract, (3) liquidate a repurchase agreement, and (4) terminate a swap agreement. The amendment is included on the recommendation of the National Bankruptcy Review Commission;

#### *Title IV*

- \* clarifies that collection of quarterly fees from chapter 11 debtors must continue until their case is closed, converted, or dismissed, despite the bill's provision allowing certain chapter 11 debtors to not pay the fees to their case trustees;
- \* clarifies that the Executive Office for U.S. Trustees must consult with the Administrative Office of the U.S. Courts when collecting the statistical information on bankruptcy cases;

#### *Title V*

- \* clarifies that exempt property, which the bill makes liable for nondischargeable family support debts, remains similarly liable despite any state laws to the contrary;

#### *Title VI*

- \* states that stockbrokers, commodity brokers, and other entities covered by the Securities Investor Protection Act are not eligible to be recognized as debtors under provisions of the bill. As reported, the bill identifies certain entities that are not eligible for relief under chapter 6 bankruptcy law pertaining to transnational insolvency cases. The amendment specifies certain persons and entities which are intended to be specifically excluded from this coverage;
- \* clarifies that foreign representatives are subject to laws of general application in the U.S. notwithstanding protections offered to them under chapter 6 provisions as they serve in their representative capacity;
- \* strikes bill language pertaining to filing a petition for recognition in U.S. courts as it related to foreign debtors. The amendment also strikes the requirement that a case must be dismissed unless recognized by a U.S. court;
- \* adds a requirement to recognizing a foreign bankruptcy proceeding in connection with a concurrent U.S. proceeding to require that an order recognizing the foreign proceeding be entered after notice is given to all interested parties and a hearing is held regarding the material issues of the foreign proceeding;
- \* clarifies the authority granted to a foreign representative to operate a foreign debtor's business while acting in a representative capacity;

- \* clarifies the grounds of relief that may be granted to creditors and other interested parties in a transnational case. The amendment outlines relief that may be granted upon (1) petition for recognition of a foreign proceeding in a U.S. court, and (2) upon recognition of a foreign proceeding. The amendment also makes section 1104 of the bankruptcy code applicable to the appointment of an fee examiner under chapter 6 provisions;
- \* strikes references to examiners in chapter 6 provisions requiring cooperation and direct communication between chapter 6 trustees and other foreign entities;
- \* clarifies that relief granted under chapter 6 provisions, including (1) relief that may be granted upon petition for recognition of a foreign proceeding in a U.S. court, (2) relief that may be granted upon recognition of a foreign proceeding, and (3) the effects of recognition of a foreign main proceeding, must be consistent with the relief granted in the case filed in the U.S. pertaining to the same foreign debtor; and
- \* makes several technical and conforming changes. *Staff Contact: Susan Jensen-Conklin, x5-2825*

**Mr. Nadler** may offer an amendment, debatable for 10 minutes, to modify provisions of the small business portion of H.R. 3150. Specifically, the amendment (1) restores the right of an individual debtor to count debt as “disposable income” if the debtor is engaged in business, for the payment of expenditures necessary to continue operating the business; (2) restores the current law definition of “small business debtor;” (3) strikes certain paperwork and deadline requirements on small businesses in the bill with which larger businesses may otherwise not comply under chapter 11 bankruptcy; (4) strikes a provision which allows creditors to violate provisions of a court-issued automatic stay if the creditor had a “good faith belief” that the violation was exempt from the stay; (5) strikes a provision prohibiting a small business from a filing new petition for bankruptcy for two years after its case was dismissed or ended; and (6) strikes a provision which requires a successor entity—one which assumes a business in bankruptcy—to bring forward a plan capable of confirmation in order to file a bankruptcy petition at all. *Staff Contact: David Lachman, x5-5635*

**Mr. Delahunt** may offer an amendment, debatable for 10 minutes, to add a new provision authorizing the Judicial Conference of the U.S. to reduce disbursement to unsecured, nonpriority creditors in chapter 13 cases to cover the increased costs to the courts and U.S. Trustees Office of implementing and administering the means testing system provided under the bill. *Staff Contact: Mark Agrast, x5-3111*

**Messrs. Boucher and Gekas** may offer an amendment, debatable for 10 minutes, to expand the definition of “household goods” which are exempt in chapters 7 and 13 bankruptcy to include any personal property that is reasonable or necessary to maintain and support a dependent child, thereby ensuring that exempt household possessions used for the benefit of the child will not be taken away from a parent filing bankruptcy by a secured creditor who did not finance the purchase of those possessions. The amendment also rewrites provisions related to debts incurred to pay nondischargeable debts, such as family support payments. Under the bill and current law, such debts are not dischargeable in bankruptcy. However, the amendment provides that if the debtor is a single parent with dependent children or a person obligated to pay child support, the debt will not be dischargeable unless the creditor shows that the debtor intentionally used the borrowed funds to



pay another nondischargeable debt. Moreover, the amendment also moves child support, alimony, and marital dissolution obligations from seventh to first priority among priority claims considered during a bankruptcy proceeding. Finally, the amendment requires that chapter 13 debtors obligated to pay child support, alimony, or marital dissolution obligations must do so before paying any other priority debt. **Staff Contacts:** *Ann Morton (Boucher), x5-3861; Dena Ellis (Gekas), x5-4315*

**Mr. Gekas** may offer an amendment, debatable for 10 minutes, to require that a prevailing party in a disputed nonchargeability proceeding where the debtor is an individual must be awarded the cost of any filing fees which result from having filed suit for the proceeding in the first place. **Staff Contact:** *Dena Ellis, x5-4315*

**Messrs. Shaw and Camp** may offer an amendment, debatable for 10 minutes, to require that credit card companies which receive payments from cardholders who are parents delinquent in child support obligations must hold those payments in trust and distribute them to parents and children entitled to receive the money according to the priority of such claims assigned under the bill. **Staff Contacts:** *Michael Harrington (Shaw), x5-3026; Jasper Thomson (Camp), x5-3561*

**Mr. Paul** may offer an amendment, debatable for 10 minutes, which places repayment of money owed to a governmental unit as last in priority claims to be considered during a bankruptcy proceeding. The result of this amendment will ensure that federal and local government agencies receive lowest priority, just before state governments, when proceeds from a debtor's liquidation or reorganization plan are distributed. **Staff Contact:** *Joe Becker, x5-2831*

**Messrs. Gekas, McCollum, and Smith (TX)** may offer an amendment, debatable for 10 minutes, to prohibit a debtor from converting non-exempt assets into exempt homestead property within one year of filing for bankruptcy. The intent of the amendment is prevent debtors from attempting to hide or protect assets from being liquidated or otherwise included in repayment obligations for outstanding debts. **Staff Contacts:** *Dena Ellis (Gekas), x5-4315; Janie Kong (McCollum), x5-2176; and Lisa Means (Smith), x5-4236*

**Mr. Scott** may offer an amendment, debatable for 10 minutes, to strike provisions of the bill relating to a recording artist's obligation to fulfill a performing contract after filing for bankruptcy protection. The intent of the amendment is to avoid compromising the rights of a debtor entering bankruptcy by enforcing obligations which may prove detrimental to his or her financial condition. **Staff Contact:** *Bobby Voser, x5-8351*

**Ms. Velazquez** may offer an amendment, debatable for 10 minutes, to require the Executive Office of U.S. Trustees and Administrative Office of the U.S. Courts to conduct a study of small business bankruptcies. The study must examine how the bankruptcy system can be improved in order to help viable small businesses to reorganize. **Staff Contact:** *Catherine Wojtasik, x5-2361*

**Mr. Baldacci** may offer an amendment (debatable for 10 minutes) directs the Comptroller General to conduct a study of the impact on the nation's bankruptcy rate due to the extension of credit to students enrolled in post-secondary education programs who are claimed as dependents for tax purposes by their parents or legal guardians. **Staff Contact:** *Chris Marin, x5-6306*

**Additional Information:** See *Legislative Digest*, Vol. XXVII, #15, Pt. II, June 9, 1998.



## H.J. Res. 119—Proposing a Constitutional Amendment to Limit Campaign Spending

**Floor Situation:** The House will consider H.J.Res. 119 after it completes consideration of H.R. 3150. On May 20, as part of the rule for H.R. 2183, the Rules Committee granted an open rule providing one hour of general debate, equally divided between Mr. DeLay and a *proponent* of the joint resolution. The rule accords priority in recognition to members who have their amendments pre-printed in the *Congressional Record*. The chairman of the Committee of the Whole may postpone votes and reduce the voting time on a postponed vote to five minutes, so long as it follows a regular 15-minute vote. Finally, the rule provides one motion to recommit, with or without instructions.

**Summary:** H.J.Res. 47 proposes a constitutional amendment to permit Congress and the states to enact laws regulating federal campaign expenditures and contributions. The resolution states that Congress and the states may adopt reasonable regulations of campaign expenditures and contributions as long as these regulations do not impair the right of the public to a full and free discussion of all issues and does not prevent any candidate from the resources necessary for effective advocacy. A constitutional amendment requires a two-thirds majority vote from both the House and the Senate, and must be ratified by three-fourths of the state legislatures within seven years.

H.J.Res. 47 was introduced by Mr. Gephardt on February 10, 1997. Mr. DeLay opposes the resolution because he argues that it gives Congress the authority to enact any legislation that may abridge an array of free speech and free association rights under the First Amendment. Nevertheless, Mr. DeLay is offering the joint resolution because he considers it important for congress to engage in an open debate on the measure.

**Views:** The Republican leadership opposes the joint resolution. A Clinton Administration view was unavailable at press time.

**Amendments:** At the close of business, the *Legislative Digest* was aware of the following amendment to H.J.Res. 119:

**Ms. Slaughter** may offer an amendment to express the sense of Congress that broadcasting stations and cable operators should provide meaningful amounts of free television time to candidates for federal office. The amendment states that the free television time should be used for programming consisting of unedited segments in which the candidate speaks directly to the camera. *Staff Contact: Dan O'Grady, x5-3615*



## H.R. 2888—Sales Incentive Compensation Act

**Floor Situation:** The House will consider H.R. 2888 after it completes consideration of H.J.Res. 119. Yesterday, the Rules Committee granted an open rule providing for one hour of general debate, equally divided between the chairman and ranking minority member of the Education & the Workforce Committee. The rule makes in order a committee amendment in the nature of a substi-



tute as base text. The rule gives priority in recognition to members who have their amendments pre-printed in the *Congressional Record*. The rule allows the chairman of the Committee of the Whole to postpone votes during consideration, and reduce the voting time on a postponed vote to five minutes, so long as it follows a regular 15-minute vote. Finally, the rule provides for one motion to recommit, with or without instructions.

**Summary:** H.R. 2888 amends the 1938 Fair Labor Standards Act to provide an exemption from minimum wage and overtime laws for certain “inside sales” employees, which the bill defines as people who work from within an employer’s establishment to sell to customers using the telephone, fax, and computer. The bill extends this new exemption to any employee in a sales position if the employee (1) has specialized or technical knowledge related to the products or services being sold; (2) makes sales predominately to persons to whom the employee has made previous sales, which does not involve initiating sales contracts entirely on cold calls; (3) receives an annual base compensation, regardless of the number of hours worked, of one and one-half times the minimum wage multiplied by 2,080 or \$16,068. This is based on the federal minimum wage of \$5.15 an hour multiplied by 40 hours per week for a 52-week work year. Wherever a higher state or local minimum wage prevails, the minimum compensation threshold will adjust accordingly; and (4) receives incentive compensation based on each sale made that is equal to at least 40 percent of the employee’s minimum base compensation or \$6,427.20. Even if an employee receives a higher base wage, the minimum incentive compensation figure remains based on a proportion of the minimum base wage. CBO estimates that enactment will have no significant impact on the federal budget. The bill was introduced by Mr. Fawell and was reported by the Education & the Workforce Committee by voice vote.

**Views:** The Republican leadership supports passage of the bill. An official Clinton Administration viewpoint was unavailable at press time.

**Amendments:** At the close of business, the *Legislative Digest* was aware of the following amendments to H.R. 2888:

**Mr. Fawell** will offer an amendment to make technical corrections to the bill. The amendment is supported by the bill’s co-sponsors. **Contact:** *Education & the Workforce Committee, 5-4527*

**Mr. Owens** may offer an amendment to allow employee’s to *voluntarily* consent to work more than eight hours a day. The amendment makes overtime an employee’s choice. **Staff Contact:** *Peter Rutledge, x6-1881*

**Additional Information:** See *Legislative Digest*, Vol. XXVII, #15, June 5, 1998.



House

REPUBLICAN

Conference

Amendment  
Alert!

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Please attach the text of the amendment (if available) and fax to the *Legislative Digest* at x5-7298

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John Boehner  
Chairman  
8th District, Ohio

Member Sponsoring Amendment: \_\_\_\_\_ Bill #: \_\_\_\_\_

Additional Co-sponsors (if any): \_\_\_\_\_

Staff Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_ Evening Phone #: \_\_\_\_\_

Description of the amendment: \_\_\_\_\_

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(Please include any additional or contextual information)

Reason for offering amendment (e.g., How will this change the bill or current law? Why should members support this change?): \_\_\_\_\_

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*Legislative Digest reserves the right to edit descriptions for style, readability, and provisional accuracy.*

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